Armco, Inc. *and* Independent Metallurgical Employees Technical, Organization/Houston, Petitioner. Case 23-RC-5139

23 July 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Nadine Brown of the National Labor Relations Board.[1] Following the close of the hearing, the Regional Director for Region 23 transferred this case to the Board for decision. Thereafter, the Employer, the Petitioner, and the Intervenor filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the hearing officer made at the hearing, and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case the Board finds

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties stipulated that the Employer is a corporation with a place of business in Houston, Texas, where it is engaged in the business of manufacturing steel. The parties further stipulated that during the 12 months preceding the hearing, a representative period, the Employer, in the course and conduct of its business, purchased and received goods and materials valued in excess of $50,000 from points located directly outside the State of Texas.

2. The Employer and the Intervenor contend that the Petitioner is not a labor organization as defined in the Act. The record reveals that prior to the filing of the petition on 18 March 1983[2] employees in the Employer's unrepresented metallurgy department met to form an independent association for the purpose of representing department employees and bargaining collectively with the Employer. The employees selected a name, engaged in organizing activity and, on 17 March, requested the Employer's recognition of their association as the exclusive bargaining representative of the metallurgy department employees (hereinafter MD employees). Not until after the filing of the petition herein did the employees elect acting officers and draft a constitution and bylaws. The organization has no funds and has never engaged in collective bargaining with this or any other employer.

It is well settled that the existence of elected officers and a constitution or bylaws is not determinative in analyzing whether an organization or association is a labor organization within the meaning of the Act. *Steiner-Liff Textile Products Co.*, 259 NLRB 1064 (1982). Nor is labor organization status based on instances of a group's dealing with an employer. In *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980), the Board stated:

> The intent of the organization, and not what it actually performs, is critical in ascertaining labor organization status, regardless of the progress of the organization's development.

In the instant case, the MD employees met and resolved to form an organization to act as their representative with respect to terms and conditions of employment. They selected a name and continued organizing toward this end. Although authority was not expressly given, the MD employees were aware that Jesse Thompson, who spearheaded the organizing drive, planned to seek recognition of their group. Thus, it is apparent that the Petitioner was formed and exists for purposes which bring it within the definition set forth in the Act.[3] On the basis of the foregoing, we find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The parties stipulated, and we find, that the Intervenor is a labor organization as defined in the Act.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections of 9(c)(1) and 2(6) and (7) of the Act.[4]

4. The Petitioner seeks to represent a unit comprised solely of nonexempt MD employees at the Employer's Houston works, excluding all other units and departments in the plant, and has stipulated that this is the only unit it will accept. The Employer contends that the petitioned-for unit is inappropriate and that the Board's Order of 1 Septem-

[1] United Steelworkers of America, AFL-CIO was permitted to intervene in this proceeding.

[2] Unless otherwise noted, all dates refer to 1983.

[3] See generally *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

[4] By letter dated 21 November 1983 and thereafter in a Motion to Dismiss the Election Petition filed on 30 January 1984, the Employer asserts that it decided to close its Houston Works and that all work performed by employees in the petitioned-for unit would cease by 31 March, and that the instant petition therefore should be dismissed as moot. The Petitioner opposes the motion arguing, inter alia, that there was no evidence that the Employer actually planned to close its Houston facility and that inasmuch as the Employer could reopen or sell the facility to a successor, the merits of the election petition should be decided. In view of the decision reached herein, no purpose is served by granting the Employer's motion and we shall deny it.

ber 1961 in Case 23-RC-1706, so finding, is determinative.[5] The Intervenor agrees with the Employer that the requested unit is inappropriate but submits that the MD employees should be included in the production and maintenance unit for which it has been the exclusive bargaining representative since 1942.[6]

Specifically, the Petitioner contends that there exists a history of bargaining between the Employer and MD employees which establishes the appropriateness of the requested unit. Further, although the Petitioner does not explicitly assert that MD employees are technical employees, it does submit that their function and training render them singularly specialized as a department. Finally, the Petitioner contends that MD employees share a community of interest. For reasons set forth below, we find the Petitioner's contentions unpersuasive and shall dismiss the petition.

The Employer's Operation

The Employer's facility consists of several buildings situated on a large tract of land. The majority of structures are production areas such as the electric furnace and the slab yard. Other buildings house offices and laboratories. Structurally, the Employer's operation includes the production and maintenance arm, which produces carbon steel and steel alloy goods; certain residual departments such as production and planning; and the metallurgy department, which is responsible for quality control and assurance at each phase of the production process. The metallurgy department is comprised of four distinct divisions: chem lab, physical metallurgy, process metallurgy, and inspection. Employees in the first three divisions work in labs and offices in the chem lab building and the physical metallurgy building. Inspection division employees are assigned to production areas.

Bargaining History

The appropriateness of a given unit rests on the subject group of employees' being united by a community of interest and free of a substantial conflict of economic interests. In analyzing whether such a community of interest exists, the Board considers such factors as: (1) bargaining history; (2) the continuity or integration of production processes; (3) frequency of interaction and interchange; (4) the similarity of skills, qualifications, and work performed; and (5) similarities in wages, hours, benefits, and other terms and conditions of employment.[7]

With respect to the first consideration, the record establishes that in 1961, pursuant to a petition filed by the Intervenor in Case 23-RC-1706, the Board determined that a separate unit of MD employees was inappropriate and dismissed the petition. The Petitioner maintains, however, that the Employer has bargained with the MD employees in the intervening two decades and that this nonobservance of the Board's Order and the ensuing bargaining history forged thereby compel a finding that the unit is appropriate. The record discloses that, in 1967, the MD employees engaged in an economic strike against the Employer which lasted 29 days. Neither the remaining residual employees nor the production and maintenance employees participated in the strike. The Employer refused all demands but, shortly after the strike ended, began meeting with a committee of MD employees the latter had selected from among themselves. Discussions centered on job duties, promotions, and "just generally things relating . . . to [MD employees'] work," according to testimony, and resulted in the upgrading of certain employees to higher salary classifications. Although other accomplishments and the exact duration of the meetings are not specified, it is apparent that the meetings continued for a number of years. The frequency and fruitfulness of these meetings eventually declined, however, and the Employer discontinued them.

Additionally, the record reveals that, in November 1982, the new head of the metallurgy department reinstituted the meetings, this time selecting the committee of MD employees himself. Notwithstanding the employees' successful challenge of the out-of-seniority recall of a laid-off employee and the salary reductions of two employees whose positions had been reclassified, the Employer retained the power to make all final decisions. The Employer also unilaterally imposed certain "austerity measures" affecting incentive pay, vacations, and cost-of-living adjustments for all residual employees, including the MD employees. The last of these meetings was held on 24 March.

The Employer contends that participation in these meetings does not constitute bargaining with the MD employees. After carefully reviewing the record, we are unable to conclude that the Employer engaged in bargaining with employees of the requested unit. Both the Petitioner's witnesses and those of the Employer characterized the meet-

[5] Not reported in volumes of Board Decisions.

[6] The Employer and the Intervenor further submit that any unit of MD employees must include workers laid off from the metallurgy department within the last 2 years and all other residual employees at the facility, and should exclude employees they contend are supervisors. In view of the Petitioner's aforementioned stipulation and our findings and conclusions herein, we find it unnecessary to decide these issues.

[7] See *Sears, Roebuck & Co.*, 250 NLRB 658 (1980). Cf. *Proctor & Gamble Co.*, 251 NLRB 492 (1980).

ings as "gripe sessions." Also, while certain concerns of the MD employees were permitted full and thorough discussion, the Employer made all final decisions and implemented changes in terms of employment without consulting the committee. Thus, the mutual obligation to meet and confer in good faith which characterizes bargaining and which distinguishes bargaining from mere dealing was not assumed here. Accordingly, we find that the MD employees and the Employer have not established a bargaining history on which a unit determination may be based. Having found that the bargaining history is not dispositive of the unit issue raised herein, we now turn to a consideration of other factors relating to community of interest.

Integration, Interaction, and Interchange

The Petitioner acknowledges the highly integrated nature of the steel production process at the Houston works and in the steel industry in general. The record establishes that it is the function of the MD employees to furnish production and maintenance employees information about nonconforming goods so that the latter may correct any defects as quickly as possible. Despite the concession that steel could not be produced without the input of MD employees, the Petitioner submits that MD employees and production and maintenance employees are functionally separate. This separation exists, the Petitioner maintains, because production and maintenance employees are concerned primarily with producing raw tonnage whereas MD employees must, as quality assurers, hold nonconforming goods. The Board has held, however, that the unit placement of quality control employees depends on their working relationship with production and maintenance employees, and is not determined simply by the degree of integration of the production process or their "inherent" functional separation.[8]

The record discloses that interaction within the metallurgy department and between the department and the production and maintenance unit ranges from minimal to extensive. The interaction of physical metallurgy division employees, whose duties include sample testing and recordkeeping, with the production and maintenance employees is limited to infrequent occasions when the division's equipment technician is unable to repair equipment in the metallurgy lab. With the exception of the sample technician who receives instructions from a production and maintenance supervisor concerning new shipments of raw ore to be tested, the chem lab division's interaction with the production and maintenance employees is likewise limited to infrequent repairs of lab equipment. The record is devoid of examples of interaction between production and maintenance employees and the process metallurgy division, which is primarily engaged in test coordinating functions and recordkeeping.

In contrast, employees in the inspection division, which constitutes one-half of the metallurgy department, all work in various production areas of the facility on shifts that parallel production and maintenance shifts. The observers, inspectors, and technicians who comprise this division inspect the slabs and plates produced in a particular mill, mark surface and internal defects, re-inspect the goods after production and maintenance employees scarf or grind the defective areas, and check the identification markings placed on the goods by production and maintenance employees. Although the inspectors are not required actually to oversee the shearing of samples and correction of defects, these MD employees do tend to work in proximity to the production and maintenance employees.

Importantly, the only regular and frequent *intra*-departmental interaction is that of employees in the process metallurgy division with employees in the chem lab and physical metallurgy division. However, employees in the process metallurgy division appear to have more contact with employees in the production and planning department, another residual department, than they do with employees in the inspection division of the metallurgy department. Physical metallurgy employees and inspection division employees do not interact at all. Thus, it appears that there is a significant degree of interaction between MD employees and production and maintenance employees, and an equally noteworthy lack of interaction among divisions within the metallurgy department itself.

There is no significant interchange between production and maintenance employees and metallurgy department employees.

Specialized Skills and Similarity of Work

In addition to its contention that MD employees are functionally separate from the production and maintenance unit, the Petitioner submits that the requested unit is peculiarly specialized. More precisely, while the Petitioner does not explicitly contend that MD employees are technical employees, it urges that the nature of their responsibilities, skills, and training have increased in the last 20 years to an extent which render MD employees a distinct group. The record reveals, however, that, with the exception of the six Quantovac chemists who work in the chem lab and six nondestructive testing tech-

[8] See *Beatrice Foods Co.*, 222 NLRB 883 (1976); and generally *Bechtel, Inc.*, 225 NLRB 197 (1976).

nicians in the inspection division, a high school diploma is the only prerequisite to employment in the metallurgy department. For all other MD employees, training is on the job, and proficiency is attained within 6 months. In contrast, the record reveals that apprenticeship programs for production and maintenance employees are substantially longer and more technical in nature than those of MD employees.

As further evidence of the singularity of skills and specialization within the metallurgy department, the Petitioner contends that: (1) recent increases in the numbers of different alloys produced requires continuous training of MD employees because they must be aware of the defects peculiar to each alloy; (2) the introduction of technologically advanced testing equipment requires more sophistication and training; (3) all MD employees may hold and scrap nonconforming products without conferring with other personnel; and (4) the reclassification of metallurgy department positions reflects the increasing responsibilities and complexities of the job. However, the record establishes that, while the types of alloys produced in the last two decades have doubled, the quantity of finished alloy products actually decreased. With respect to the new machinery which has been introduced to the metallurgy department, the record discloses that at least half of the new equipment was acquired to replace similarly operated machines used in 1961. Further, the parties agreed that, once learned, operation of the new equipment generally becomes routine and repetitive. As quality control personnel, MD employees may scrap defective products or hold them pending a decision to scrap or apply them to another order, and are not required to seek approval of their decisions. Such a determination is a function of the nonconformity of the product to customer specifications and to established standards. Hence, while a decision to scrap or hold goods may be made "independently," or without prior approval, it is not based on the exercise of independent judgment. Regarding the upgrading of metallurgy department salary classifications, the Employer presented evidence that it sought to bring the department into alignment with other Armco facilities, as well as to acknowledge the increased responsibilities of the positions.

Technical employees are those whose duties are generally technical in nature, who use independent judgment in the course of performing their duties, and who usually receive technical training.[9] MD employees do not receive technical training, they do not exercise independent judgment, and their jobs, once learned, are of a routine and repetitive nature. Accordingly, we find that these employees are not technical employees. Additionally, we do not find MD employees to be so specialized as to comprise an appropriate unit. For 31 of the 43 positions in the department, no extensive training nor anything more than a high school diploma is required. While more types of alloy steels are being produced, the record discloses that the large majority of the Employer's output is standard, carbon steel products. Finally, most of the equipment used by these employees has been used, or is similar to that used, throughout the last 20 years.

Other Factors

We note that there are a number of differences between the requested unit and the production and maintenance unit. The two are separately supervised and use separate entrances and lunch and parking facilities. Also, MD employees are salaried; while production and maintenance employees receive an hourly wage. We conclude, however, that these differences are overcome by the extent of interaction between the metallurgy department and production and maintenance unit, and the inversely low degree of interaction among divisions of the metallurgy department itself. In short, we find that there is an insufficient community of interest among MD employees to warrant a determination that the petitioned-for unit is appropriate. As we find no basis for establishing a separate bargaining unit for metallurgy department employees, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein by Independent Metallurgical Employees Technical Organization/Houston is dismissed.

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[9] *Beverly Convalescent Centers*, 264 NLRB 966 fn. 4 (1982); *Folger Coffee Co.*, 250 NLRB 1 (1980); *Exxon Co., U.S.A.*, 225 NLRB 10 (1976); and *Vapor Corp.*, 242 NLRB 776 (1979).